

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1494 of 1997

with

CIVIL APPLICATION N. 4610 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNITED INDIA INSURANCE CO LTD

Versus

NANDABEN,WD/O BUDHABHAI CHOTABHAI VAGHRI

Appearance:

MR DARSHAN M PARIKH for Petitioner
MR BS PATEL for Respondents

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

Date of decision: 04/08/97

ORAL JUDGEMENT

Admit. Learned advocate Mr. B.S.Patel appears for the respondents-original claimants. Upon joint request and

considering the facts and circumstances, the matter is taken up for final hearing.

In this appeal under Section 173 of the Motor Vehicle Act, 1988, the appellant -original opponent No.3 -insurance company has questioned the legality and validity of the judgment and award dated 31.8.1996 recorded by the MACT (Auxiliary) Nadiad in MACP No. 1458 of 1988.

Deceased Budhabhai aged about 21 was proceeding on Luna on 6.8.1988. When he reached near the place of the accident, one tanker bearing No.GTG 2445 came with excessive speed on wrong side and knocked down the deceased and the pillion rider, as a result of which, the deceased sustained serious injuries and he succumbed to the same. The deceased was earning Rs.1,200/- per month. Over and above this, he was doing agriculture labour work and also work of milk selling. The original claimants are the heirs of the deceased who claimed an amount of Rs. 5,00,000/- by way of compensation for premature and accidental death of the bread-winner of the family.

Original opponent No.3-the appellant herein only filed its written statement at Ex./ 20 and opposed the claim petition, inter alia, contending that the accident had not occurred in the manner and mode in which the claimants have made averments in the claim petition. It was also their case that the deceased himself was negligent and the driver of the tanker was not rash, negligent and responsible for the accident.

After having examined the facts, circumstances and evidence on record, the tribunal allowed the claim petition holding that the driver of the tanker was rash, negligent and responsible for the accident and awarded Rs. 3,34,000/- under both the heads with interest and apportioned between the claimants by passing the judgment and award dated 31.8.1996 which is directly in challenge in this appeal.

After having heard the learned advocates for the appellant and the respondents and considering the facts and circumstances and evidence copies whereof were supplied to us during the course of submissions, we are of the opinion that the amount of Rs. 3,00,000/- with cost and interest would meet the ends of justice, instead of Rs. 3,34,000/- awarded by the tribunal. Learned advocate for the respondents has also, under instructions, agreed that amount of Rs. 3,00,000/- would

be justified and reasonable for the injuries sustained by the deceased.

The widow of the deceased was examined at Ex. 34. It is clear from her evidence that the deceased had 10 Bighas of land and he was doing agriculture work and producing Banana, tobacco etc. over and above agricultural business. The deceased was also running a flour mill and from the said flour mill, he was earning Rs.20/- to Rs. 25/- per day. Agricultural property records were produced, certificate of Gram panchayat was also produced. After considering the evidence on record, the tribunal assessed the monthly income, considering the prospective earning and other relevant aspects, at Rs. 2,450/-, the dependency value was assessed at Rs. 1,700/-. Therefore, annual dependency value came to Rs. 20,400/-. The tribunal adopted multiplier of 15. Therefore, the claimants were found entitled to an aggregate amount of Rs. 3,06,000/under the head of loss of dependency value. They were also awarded conventional amount of Rs 20,000/for loss of expectation of life. Amount of Rs. 5,000/was added as consortium and Rs. 3,000/- as funeral expenses. In all, the tribunal awarded Rs. 3,34,000/by way of compensation to the claimants.

After having analysed the evidence, facts and circumstances, the amount of Rs. 3,00,000/- would be just and reasonable amount of compensation for untimely and premature demise of the young bread-winner of the family aged 21 at the relevant time. Mr. Patel, learned advocate for the respondents also fairly agreed that amount of Rs. 34,000/- would be excessive amount. Therefore, considering the age, avocation, income, future prospects, we have no hesitation in holding that amount of Rs. 3,00,000/- under both the heads, like that, (i) loss of dependency and (ii) loss of expectation of life, is quite just and reasonable by way of compensation for the untimely death arising out of the vehicular accident.

In view of the aforesaid facts and circumstances, the claimants would be entitled to an amount of Rs., 3,00,000/- against the award of Rs. 3,34,000/-. The appeal is accordingly allowed to that extent.

Respondents Nos. 1 to 4 are the original claimants. Respondent No.1 is the widow, respondent No.2 is the minor daughter, respondent No.3 is the father and respondent No.4 is the mother of the deceased.

As regards apportionment of the amount of award , the amount of Rs.3,00,000/- will be apportioned in the ratio of 45:25:15:15 respectively between the claimants viz. widow, minor daughter, father and mother of the deceased. After deducting the amount towards deficit court fees, if any and also an amount of Rs 10,000/- which shall be paid to the widow of the deceased for expenses, the amount coming to the respective shares of the claimants shall be invested fully in a fixed deposit receipt in a nationalised bank or any other higher yielding interest scheme of Government atleast for a period of five years in cases of widow, father and mother of the deceased and in case of minor daughter, for a period of 10 years or till she attains majority whichever is later. The interest which shall accrue due thereon periodically shall be paid to the respective claimants; whereas interest coming to the share of the minor daughter shall be paid to the widow of the deceased viz. mother of the minor for the welfare of the minor.

It will be open for the claimants to move the tribunal for appropriate orders for disbursement out of the deposited amount in case of any urgency or eventuality.

It is jointly submitted that the amount as per the interim order has already been deposited before the Tribunal. Over and above this, an amount of Rs. 25,000/- has been deposited alongwith appeal under Section 173 of the Motor Vehicles Act, 1988. Obviously, amount of Rs. 3,00,000/- with proportionate cost and interest is awarded. The additional amount or surplus amount shall be refunded to the appellant-original opponent No.3-insurance company. The amount of Rs. 25,000/- deposited in this court shall be transmitted to the tribunal forthwith.

The appeal is accordingly partly allowed. Office is directed to send writ immediately to the tribunal.

In view of the aforesaid directions and observations, the claimants would be entitled to a total amount of Rs., 3,00,000/- with proportionate cost and interest thereon, at the same rate of interest as awarded by the Tribunal and it will be open for the Tribunal to make order for disbursement and investment as stated above accordingly. Direct service permitted.

No orders on Civil application No.4610 of 1997.